

The Family and Medical Leave Act

Military Family Leave Entitlements

NOTICE: On October 28, 2009, the President signed the National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA), Public Law 111-84. Section 565 of the 2010 NDAA amends the military family leave entitlements of the Family and Medical Leave Act (FMLA). These amendments expand coverage for “qualifying exigency” leave to eligible employees with covered family members in the Regular Armed Forces and coverage for “military caregiver leave” to eligible employees who are the spouse, son, daughter, parent , or next of kin of certain veterans with a “serious injury or illness”.

The Family and Medical Leave Act Military Family Leave Entitlements MILITARY FAMILY LEAVE ENTITLEMENTS

Military Caregiver Leave:

A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin or a covered servicemember with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to care for the servicemember. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one that as incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating. The “single 12-month period” for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other types of FMLA leave. An eligible employee is limited to a combined total of 26

The Family and Medical Leave Act Military Family Leave Entitlements

FMLA Leave for a QUALIFYING EXIGENCY :

Section 565(b)(1) of the Act adds a new subsection (a)(1)(E) to 5 U.S.C. 6382 to provide employees with an entitlement of up to 12 administrative workweeks of unpaid FMLA leave during the 12-month periods for any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

The Family and Medical Leave Act

Military Family Leave Entitlements

Qualifying Exigencies include:

- Short notice deployment (i.e., deployment on seven or less days of notice)
- Military events and related activities
- Certain childcare and related activities
- Making or updating financial and legal arrangements
- Attend Counseling (for oneself, covered military member, or the child of the covered military member)
- Rest and Recuperation leave during deployment – To spend time with a military member who is on short-term, temporary, rest and recuperation leave during the period deployment.
- Attend certain post-deployment activities.
- Any other event that the employee and employer agree is a qualifying exigency.
- FMLA leave may be taken intermittently, whenever medical is necessary to care for covered servicemember for serious illness, injury or qualifying exigency.

The Family and Medical Leave Act Military Family Leave Entitlements

Certification for Qualifying Exigency Leave:

Until specific regulations are issued by OPM, Federal agencies are instructed to use the information outlined below to determine whether the employee qualifies for this type of leave:

- Active duty orders.
- Required information. May require that leave for any qualifying exigency as provided for in 5 U.S.C. 6382(a)(1)(E) be supported by a certification from the employee that provides the following information:
- A statement of description, signed by the employee of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave;
- The approximate date on which the qualifying exigency commenced or will commence;

The Family and Medical Leave Act Military Family Leave Entitlements

Certification for Qualifying Exigency Leave:

- If leave is requested for a single, continuous period of time, the beginning and end dates for such absence;
- If leave is requested on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency; and
- If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with who the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and e-mail address) and a brief description of the purpose of the meeting.

The Family and Medical Leave Act Military Family Leave Entitlements

FMLA Leave to Care for a Covered Servicemember:

Section 585 (b) of the NDAA for FY 2008 amended the FMLA provisions in 5 U.S.C 6381-6383 (applicable to Federal employees) to provide military family leave entitlements for a Federal employee who (1) is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered servicemember with a serious injury or illness and (2) provides care for such servicemember.

- The serious illness or injury must have been incurred by the covered service member in the line of duty while on active duty in the Armed Forces.
- Covered family members are entitled to up to 26 weeks of FMLA leave during a single 12 month period to care for the servicemember.
- During the 12 month period, the employee is entitled to combined the total of 26 weeks of regular FMLA and FMLA to care for a covered servicemember.

The Family and Medical Leave Act Military Family Leave Entitlements

FMLA Leave to Care for a Covered Servicemember:

- The use of this leave to care for a covered servicemember in a single 12-month period does not limit the use of regular FMLA leave during any other 12-month period.
- Similar to regular FMLA leave, FMLA to care for covered servicemember is unpaid leave for which an employee may substitute any accumulated annual or sick leave. However, the normal leave year limitations on the use of sick leave to care for a family member do not apply (104 hours);

The Family and Medical Leave Act Military Family Leave Entitlements

New and Revised Definitions Affecting FMLA Leave to Care for a Covered Servicemember:

- **Covered servicemember:**

(1) a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The Family and Medical Leave Act Military Family Leave Entitlements

New and Revised Definitions Affecting FMLA Leave to Care for a Covered Servicemember:

- **Veteran:** “Veteran” is defined a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.
- **Serious injury or illness:** The Act expands the definition of “serious injury or illness” to care for a covered servicemember, to add conditions existing prior to active duty that were aggravated by active duty, and to include provisions related to “serious injury or illness” for veterans.